

OHIO HAZARDOUS WASTE FACILITY SITING PROVISIONS

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Relevant Statutes and Regulations:

G Ohio Administrative Code (OAC), Revised 8/97.

! OAC Rule 3745-54-18 (Location standards)

! OAC Rule 3745-50-40(E)(8)

! OAC Rule 3745-50-41(A)&(C)

! OAC Rule 3745-50-51(H)&(I)

<http://204.89.181.223/oac.htm> has the Ohio Administrative Code

G Page's Ohio Revised Code Annotated, Title 37: Health-Safety-Morals, 1995.

! ORC §3734.05(C)

! ORC §3734.05(D)

! ORC §3734.12

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Other Relevant State Documents:

G Ohio Hazardous Waste Facility Board, *Information Packet*, Revised 6/16/98.

State Agency Web Address

G <http://www.epa.ohio.gov/>

Affected Facilities:

G New hazardous waste facilities

G Class 3(b) modifications to existing facilities

Definitions of Facility Types:

G Definitions under Ohio's hazardous waste regulations (Rule 3745-50-10):

! "Facility" or "hazardous waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).

! No definition for "new" or "existing" hazardous waste facility. The State uses the Federal definitions for these terms.

Ohio Hazardous Waste Facility Siting Provisions

G Definitions under Ohio's statutes:

- ! No definition for "new" or "existing" hazardous waste facility. The State uses the Federal definitions for these terms.
- ! "Class 3(b) modification" means a change or alteration to a hazardous waste facility or its operations that impacts on the siting criteria contained in ORC Rule 3734.05(D)(6) (*/3734.05(I)(1)J*).

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Topic	Stage ¹	State citation ²	Provision
ADMINISTRATION			
STATE ADMINISTERING AGENCY			
The Ohio Environmental Protection Agency (The Ohio EPA) and the Hazardous Waste Facility Board	PA	Information Packet, Revised 6/16/98.	<p>! The Ohio EPA has the exclusive responsibility for acting on applications for:</p> <ul style="list-style-type: none"> - revisions of existing permitted facilities, and - permit renewal. <p>The Ohio EPA also has exclusive responsibility for the supervision, regulation, and enforcement of all hazardous waste facilities.</p> <p>! The Hazardous Waste Facility Board has exclusive responsibility for acting on permit applications for:</p> <ul style="list-style-type: none"> - new hazardous waste facilities, and - Class 3(b) modifications of existing facilities.
The Ohio EPA: Director of the Environmental Protection Agency (the Director)	PPA PA PDP	[3734.12]	The Director has the authority to adopt and may modify, suspend, or rescind rules in accordance with ORC Chapter 119 which shall be consistent with the regulations adopted under the RCRA Act of 1976, as amended.

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Topic	Stage ¹	State citation ²	Provision
The Ohio EPA: Director of the Environmental Protection Agency (the Director) – continued	PA	<i>[3734.02(C)]</i> OAC Rules 3745-50-40(E)(8), 50-41(A)&(C) and 50-51(H)&(I). Information Packet, Revised 6/16/98.	The Director receives permit applications and transmits completed applications for new facilities or Class 3(b) permit modifications to existing facilities to the Hazardous Waste Facility Board.
	PA	<i>[3734.05(D)(1)]</i>	The Director or designee serves as chairman of the Hazardous Waste Facility Board.

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THE INTERAGENCY COORDINATING COUNCIL			
Not directly addressed.			
INDEPENDENT SITING BOARD			
Hazardous Waste Facility Board (the Board)	PPA PA	[3734.05(D)(1)]	<p>! The Board is composed of:</p> <ul style="list-style-type: none"> - the director of environmental protection or designee (chairperson), - the director of natural resources or designee, - the chairman of the Ohio water development authority, or designee, - one chemical engineer employed by a State university, and - one geologist employed by a State university. <p>! The chemical engineer and geologist are appointed by the governor, with the advice and consent of the senate, for a term of two years</p> <p>! The chemical engineer and geologist each shall receive as compensation \$5,000 per year, plus expenses necessarily incurred in the performance of their duties.</p> <p>! The Board shall not issue any final order without the consent of at least three members.</p>

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Hazardous Waste Facility Board: general duties and responsibilities	PPA PA	<i>[3734.05(D)(2)]</i>	<p>! Pursuant to ORC Chapter 119, the Board shall adopt rules governing procedures to be followed in hearings before the Board.</p> <p>! Except as provided in ORC 3734.123 (addressing commercial hazardous waste incinerators), the Board shall approve or disapprove applications for a hazardous waste facility installation and operation permit.</p>
Hazardous Waste Facility Board: facility installation and operation permit decisions	PA	<i>[3734.05(D)(6)(h)]</i> second and third paragraphs	<p>In rendering a decision upon an application for a hazardous waste facility installation and operation permit application,</p> <ul style="list-style-type: none"> - The Board shall issue a written order and opinion, which shall include specific findings of fact and conclusions of law which support the Board's approval or disapproval of the application. - If the Board approves an application, as part of its written order, it shall issue the permit, upon such terms and conditions as the Board finds necessary to ensure the construction and operation of the HW facility in accordance with ORC 3734.05.

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LOCAL COMMUNITY NEEDS AND INVOLVEMENT			
LOCAL REVIEW/INVOLVEMENT			
No provisions found, other than those specified under Public Participation			
OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT			
No provisions found.			
COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS			
No provisions found.			
IMPACT OF FACILITY ON LOCAL LAND USE			
Compatibility with existing land uses	PA	[3734.05(D)(6)(g)]	The applicant must demonstrate that the active areas within a new facility where the proposed hazardous waste activities will be conducted are not located or operated (1) within 2,000 ft of a residence, school, jail or prison; (2) in wetlands; and (3) in flood hazard areas.

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PUBLIC PARTICIPATION			
The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)			
NOTIFICATION			
Public notice of tentative permit denial by director of the Ohio EPA	PA	OAC Rules 3745-50-21(C) and 47-07(A)(1)	The Director shall give public notice on intent to deny a permit application.
Public notice by applicant regarding proposed facility	PA PPA	<i>[3734.05(C)]</i>	! The applicant shall notify by certified mail the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located within 10 days after the submission of a facility installation application and operation permit. ! For a proposed new or modified HW disposal or thermal treatment facility, the applicant must also give notice of the general design and purpose of the facility to the legislative authority of each municipal corporation, township, and county in which the facility is proposed to be located at least 90 days before the permit application is submitted to the environmental protection agency.

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Public notice of draft permits	PDP	OAC Rule 3745-47-07(A)(1)	The Agency shall give public notice of all actions.
Public notice of public hearing	PA	[3734.05(D)(3)(b)] OAC Rule 3745-47-07(A)(2) Information Packet, Revised 6/16/98.	The Board shall give public notice of the date of the public hearing and a summary of the application in a newspaper having general circulation in the county in which the facility is proposed to be located.
Publication of notice	PA PDP	OAC Rule 3745-47-07(A)(2)	<p>! Publication of notice shall be done within 15 days after issuance of an action, initiation of consideration, or receipt of a complaint.</p> <p>! Publication of notice shall be done at least 30 days prior to a public meeting or an adjudication hearing.</p>

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Mailing of public notices to persons on mailing list	PDP	OAC Rule 3745-47-07(A)(3) OAC Rule 3745-47-07(B)	<p>! All required notices shall be mailed by first class mail to all persons required on the mailing list of subscribers maintained pursuant to 3745.07 as follows:</p> <ul style="list-style-type: none"> - within 7 days after issuance of an action, receipt of a complaint, - at least 14 days prior to a public meeting or an adjudication hearing. <p>! If any person has requested, in writing, to be kept informed of agency actions relating to a particular source or facility, or has requested a copy of the application, action or fact sheet, and if the agency later issues an action or receives a complaint relating to the source or facility, the agency shall send a notice to that person within 15 days after issuance or receipt.</p>
Mailing of public notice for adjudication hearing		OAC Rule 3745-47-07(D)(1)	<p>! The agency shall send notice by certified mail to the time and place of an adjudication hearing to all parties at least 30 days prior to the hearing.</p>
Return receipt required		OAC Rule 3745-47-07(E)(1)	<p>! All actions but final action shall be mailed by certified mail, return receipt requested.</p>

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Content of public notice for public hearing	PA	<i>[3734.05(D)(3)(b)]</i> Information Packet, Revised 6/16/98.	The notice for a hearing shall include at a minimum: <ul style="list-style-type: none"> - the date, time, and location of the public hearing, - the location and street address of, or the nearest intersection to, the proposed facility, - a description of the proposed facility, - the location where copies of the application, a short statement by the applicant of the anticipated environmental impact of the facility, and a map of the facility are available for inspection.

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PUBLIC MEETING			
The Board may schedule public meetings	PA	OAC Rule 3745-47-07(A)(1) Information Packet Revised 6/16/98.	The Board may , on a case by case basis, hold public meetings to receive additional comments on permit applications.
PUBLIC HEARINGS			
Public hearing on permit application by the Hazardous Waste Facility Board	PA	[3734.05(D)(3)(a)]	<p>! The Board shall promptly fix a date for a public hearing on the application within 60 to 90 days after receipt of the completed permit application from the director of environmental protection.</p> <p>! At the public hearing, any person may submit written or oral comments on the approval or disapproval of the application.</p> <p>! A representative of the applicant who has knowledge of the location, construction, operation, closure and post-closure care of the facility shall attend the public hearing in order to respond to comments or questions directed to him by the presiding officer.</p>
	PA	Information Packet Revised 6/16/98.	<p>! The Board holds a public hearing to receive comments and/or exhibits.</p>

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ADJUDICATORY HEARINGS			
Adjudication hearing on permit application by the Hazardous Waste Facility Board	PA	<p><i>[3734.05(D)(3)(c)]</i> Information Packet Revised 6/16/98.</p> <p>Information Packet Revised 6/16/98.</p>	<p>! The Board shall promptly fix a date for an adjudication hearing within 90 to 120 days after receipt of the completed permit application from the director of environmental protection.</p> <p>! The Board will assign a hearing examiner and technical advisor(s) to review/administer a case.</p> <p>! At the adjudication hearing, the Board shall hear and decide all disputed issues between the parties respecting the approval or disapproval of the application.</p>

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Parties to an adjudication hearing	PA	<p><i>[3734.05(D)(4)]</i> Information packet Revised 6/16/98.</p> <p>Information packet, Revised 6/16/98.</p>	<p>! Parties to an adjudication hearing shall be the following:</p> <ul style="list-style-type: none"> - the applicant, - the staff of the Ohio Environmental Protection Agency, - the Board of county commissioners of the county, - the Board of township trustees of the township, - the chief executive office of the municipal corporation in which the facility is proposed to be located, - any other person who would be aggrieved or adversely affected and who files a petition to intervene in the adjudication hearing not later than 30 days after the publication of a notice of public hearing under ORC 3734.05(D)(3)(b), if the petition is granted by the Board. <p>! The Board may allow intervention by other aggrieved or adversely affected persons up to 15 days prior to the date of the adjudication hearing for good cause shown when the intervention would not be unduly burdensome to or cause a delay in the permitting process.</p> <p>! The request will be acted upon by the hearing examiner.</p>

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Adjudication hearing procedures	PA	<i>[3734.05(D)(5)]</i>	<p>! The Board shall conduct an adjudication hearing in accordance with ORC Chapter 119 and the rules of the Board governing the procedure for such hearings. (OAC Chapter 3734-1)</p> <p>! Each party may call and examine witnesses and submit evidence respecting the disputed issues presented by an applicant.</p> <p>! A written record shall be made of the hearing and of all testimony and evidence submitted to the Board.</p>
Adjudication hearing decision	PA	Information packet Revised 6/16/98.	<p>! The hearing examiner and/or technical advisor(s) reviews the application, public comments, transcripts of hearings/meetings and files a recommendation and written statement to the Board as to whether the application should be approved or denied.</p> <p>! The Board reviews the recommendation, the written statement and the entire record of the case and makes a final order and opinion to approve or deny the application.</p> <p>! The Board's decision is appealable by the parties to the Franklin County Court of Appeals.</p>

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PUBLIC PARTICIPATION - OTHER			
Public Information Sessions			
Hazardous Waste Facility Board: Public Assistance Group (PAG). The PAG is utilized if requested by community or the need arises.	PA	Board's Practices	<p>! The Board in 1990 created a new section called the Public Assistance Group (PAG) to assist the public in its participation in the Ohio hazardous waste permitting process by providing information regarding permit applications and related matters.</p> <p>! The PAG cannot render opinions, suggestions nor recommendations regarding applications.</p>
A Public Information Session may be scheduled by the Board	PA	Board's Practices	<p>! Once the Board receives a permit application from the Ohio EPA, it may schedule and conduct a Public Information Session in the community. The Session will consist of a brief presentation which explains the State hazardous waste permitting system and the opportunities for public input and participation. The specific role of the PAG is to:</p> <ul style="list-style-type: none"> - outline routes in which the public may participate, - answer questions from the public, and - provide any related information. <p>! Public Information Sessions are generally held in those cases that entail disputed issues.</p>

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A Public Information Session may be scheduled by the Board – continued			! If a Public Information Session is not scheduled, the PAG will accept invitation to speak to the public about the permitting process and related matters.
Fact sheets provided before and after official receipt of permit application from Ohio EPA	PPA PA	Board's Practices	! The PAG will provide the public with fact sheets both before and after the official receipt of permit applications from the Ohio EPA. ! Copies of these fact sheets will be made available to: - those on the Board mailing list, - the public by request, and - the public at the time of the Public Information Session.
Appeals			
Any party adversely affected by an order of the Hazardous Waste Facility Board may appeal	PDP	[3734.05(D)(7)]	Any party adversely affected by an order of the Board may appeal the order and decision of the Board to the court of appeals of Franklin County.

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Appeal procedures: filing of notice of appeal	PDP	[3734.05(D)(7)]	<p>! An appellant shall file a notice of appeal, which shall designate the order appealed from, with the Board. The appellant shall also file a copy of the notice with the court, and send a copy by certified mail to each party to the adjudication hearing before the Board.</p> <p>! Notices shall be filed and mailed within 30 days after the date upon which the appellant received notice from the Board by certified mail of the making of the order appealed from.</p> <p>! No bond shall be required to make an appeal effective.</p>
Appeal procedures: effect of an appeal on order of the Board	PDP	[3734.05(D)(7)]	<p>! The filing of a notice of appeal shall not operate automatically as suspension of the order by the Board.</p> <p>! If it appears to the court that an unjust hardship to the appellant will result from the execution of the Board's order pending determination of the appeal, the court may grant a suspension of the order and fix its terms.</p>
Appeal procedures: duties of the Board	PDP	[3734.05(D)(7)]	<p>! Within 20 days after receipt of the notice of appeal, the Board shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including any transcript of the testimony and other evidence that has been submitted before the Board.</p> <p>! If the complete record is not filed within the time provided, any party may apply to the court to have the case docketed, and the court shall order the record filed.</p>

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Appeal procedures: expenses	PDP	<i>[3734.05(D)(7)]</i>	<p>! The expense of preparing and transcribing the record shall be taxed as a part of the costs of the appeal.</p> <p>! The appellant, other than the State or a political subdivision, shall provide security for costs satisfactory to the court considering the respective interests of the parties and the public interest.</p> <p>! Upon demand by a party, the Board shall furnish, at the cost of the party requesting it, a copy of the record.</p>

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Appeal procedures: duties of the court	PDP	[3734.05(D)(7)]	<p>Duties of the court are as follows:</p> <ul style="list-style-type: none"> ! In hearing the appeal, the court is confined to the record as certified to it by the Board. ! The court may grant a request for the admission of additional evidence when it is satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the Board. ! The court shall affirm the order, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence. ! In the absence of such evidence, the court shall reverse, vacate, or modify the order to make such other ruling as is supported by reliable, probative, and substantial evidence. ! The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. ! Appeals of the court's decision may be taken by any party to the appeal pursuant to the Rules and Practice of the Supreme Court and ORC Chapter 2505.

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SITING RESTRICTIONS AND PROHIBITIONS			
Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document.			
SOIL AND WATER			
Soil contamination	PA	[3734.05(D)(6)(d)(vi)]	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of soil contamination.
Contamination of ground and surface waters	PA	[3734.05(D)(6)(d)(i)]	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of contamination of ground and surface waters.
SEISMIC CONSIDERATIONS			
Location near faults	PA	OAC Rule 3745-54-18(A)(1)	Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time. (Same as Federal)

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FLOODING AND EROSION			
100-year floodplain restrictions	PA	OAC Rule 3745-54-18(B)(1)&(1)(a)	A facility in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate in the permit application that procedures are in effect which will cause the waste to be removed safely, before the flood waters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters. (Same as Federal)
Flood hazard areas	PA	[3734.05(D)(6)(g)(iii)]	<p>! The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the active areas within a new hazardous waste facility where acute hazardous waste, or organic toxic waste is being stored, treated, or disposed of and where the aggregate of the storage and disposal design capacity is greater than 250,000 gallons are not located or operated within any flood hazard area.</p> <p>! The applicant must show that the facility will be designed, constructed, operated and maintained to prevent washout by a 100-year flood or that procedures will be in effect to remove the waste before flood waters can reach it. (Same as Federal)</p> <p>! This requirement does not apply if the applicant can demonstrate that the facility is to be located or operated in an area where the proposed hazardous waste activities will not be incompatible with existing land uses in the area.</p>

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AIR			
Air pollution	PA	<i>[3734.05(D)(6)(d)(v)]</i>	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of air pollution.

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DISTANCE LIMITATIONS/BUFFER ZONES			
Setback distance from residence, school, hospital, jail or prison	PA	[3734.05(D)(6)(g)(i)]	<p>The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the active areas within a new hazardous waste facility where acute hazardous waste, or organic waste that is toxic is being stored, treated, or disposed of and where the aggregate of the design, storage, and disposal capacity is greater than 250,000 gallons are not located or operated within 2,000 feet of any residence, school, hospital, jail or prison.</p> <p>! The requirement does not apply if applicant can demonstrate the facility will impose no substantial danger to the health and safety of persons occupying such structures and the proposed hazardous waste activities will not be incompatible with existing land uses in the area.</p>
OTHER HUMAN HEALTH CONSIDERATIONS			
Nature and volume of waste	PA	[3734.05(D)(6)(a)]	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines the nature and volume of the waste to be treated, stored, or disposed of at the facility.
Fires or explosions	PA	[3734.05(D)(6)(d)(ii)]	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of fires or explosions from treatment, storage, or disposal methods.

¹PPA = Pre-permit application provision PA = Post permit application, but prior to draft permit provision PDP = Post draft permit provision PP = Post permit issuance provision

²Citations bracketed in italics (e.g., [3734.05(D)(6)(a)]) indicate provisions from the State's statutes; citations in regular print are from the State's regulations.

Ohio Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Accident during transportation of hazardous waste	PA	<i>[3734.05(D)(6)(d)(iii)]</i>	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of accident during transportation of hazardous waste to or from the facility.
Impact on the public health and safety	PA	<i>[3734.05(D)(6)(d)(iv)]</i>	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents minimum risk of impact on the public health and safety.
ENVIRONMENTALLY SENSITIVE AREAS			
General environmental impact	PA	<i>[3734.05(D)(6)(c)]</i>	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, and other pertinent considerations.
Wetlands	PA	<i>[3734.05(D)(6)(g)(ii)]</i>	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the active areas within a new hazardous waste facility where acute hazardous waste, or organic waste that is toxic is being stored, treated, or disposed of and where the aggregate of the design capacity is greater than 250,000 gallons are not located or operated within any naturally occurring wetland, unless the applicant can demonstrate to the Board that the proposed hazardous waste activities will not be incompatible with existing land uses in the area.

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Ohio Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Protection of state parks, national parks and recreational areas	PA	<i>[3734.05(D)(6)(h)]</i>	<p>! The Board shall not approve an application for a hazardous waste facility installation and operation permit proposed to be located within the boundaries or a state park, national park or recreational area, unless the facility will be used exclusively for the storage of hazardous waste generated within the park or recreational area.</p> <p>! The above requirement does not apply to the modification of a facility unless the modification application proposes to increase the land area of the facility or to increase the quantity of hazardous waste that will be treated, stored or disposed of at the facility.</p>

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Ohio Hazardous Waste Facility Siting Provisions

Topic	Stag e ¹	State citation ²	Provision
OTHER RESTRICTIONS			
Salt dome formations, salt bed formations, underground mines and caves	PA	<i>[3734.54-18(c)]</i>	The Agency prohibits the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave.

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Ohio Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found.			
ECONOMIC CRITERIA			
No provisions found.			
OTHER CRITERIA			
Failure to comply with hazardous waste regulations	PA	[3734.05(D)(6)(b)]	The Board shall not approve an application for a hazardous waste facility installation and operation permit unless it finds and determines that the facility complies with the director's hazardous waste standards adopted pursuant to ORC 3734.12 (i.e., the hazardous waste regulations).

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